IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WA.No. 769 of 2006(B)

AGAINST THE JUDGEMENT IN OP.2419/2003 Dated 07/03/2006

APPELLANTS: PETITIONERS

1. O.BALANARAYANAN,
   PARTNER, MENON & PILLAYS AND
   ADVOCATE, K.S.N.MENON ROAD, KOCHI-16.

2. B.N.SHIVA SHANKER,
   PARTNER, MENON & PILLAYS AND
   ADVOCATE, K.S.N.MENON ROAD, KOCHI-16.

3. B.N.VISHNUMOHAN,
   55/1869, K.S.N.MENON ROAD, KOCHI-16.

BY ADV. SRI.O.BALANARAYANAN

RESPONDENTS: RESPONDENTS:

1. LAND BOARD, COMMISSIONERATE FOR LAND REVENUE,
   THIRUVAANANTHAPURAM.

2. TALUK LAND BOARD, MANANTHAVADI,
   OLLECTORATE, KALPETTA.

3. DIRECTOR OF VIGILANCE AND ANTI
   CORRUPTION BUREAU, THIRUVANANTHAPURAM.

4. THE GOVERNMENT OF KERALA BY
   CHIEF SECRETARY TO THE GOVERNMENT,
   THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 769 OF 2006 B

Dated this the 7th June, 2007

JUDGMENT

K.T.SANKARAN,J.

This Writ Appeal is filed by the petitioners in O.P.No.2419 of 2003, challenging the judgment of the learned single Judge dated 7th March, 2006.

2. The Original Petition was filed for the following reliefs:

> "a) issue an interim order calling for records of the case TLB 1104/73 (Mtdy.) from the 2nd Respondent and peruse the same.
>
> b) issue an appropriate order or writ quashing if true the rejection of the Report of C.Ramakumaran alleged to have been done by Chairman of 2nd Respondent on 23/4/86 as illegal and arbitrary and not based only any material and without observing quasi judicial procedure and Rules of natural justice.
>
> c) issue appropriate writ or order declaring that the Respondents or any other Taluk Land Board have no power or jurisdiction while deciding ceiling case of O.Jayaraman TLB 1104/73 (Mtdy) to disregard or differ from the findings of Taluk Land Board, Taliparamba in the ceiling case of a totally different person O.Balanarayanan in its order dated 15/10/88 in T.L.B.14/86 (TBA) and issue a prohibitory injunction against the Respondents 1 and 2 from doing so.

d) issue an appropriate writ or order directing immediate deletion of R.S.Nos.195, 196, 197, 198, 199, 200/1, 201/1 of Arattuthara desom, Mananthavadi Taluk from the list of lands held by declarant in the ceiling case and account of O.Jayaraman in T.L.B.1104/73 (Mtdy) and give effect the findings in T.L.B.14/86 (TBA) of Thaliparamba Taluk Land Board.

e) issue an appropriate writ or order transferring T.L.B.1104/73 (Mtdy) on the file of Taluk Land Board, Mananthavadi to some other Taluk Land Board outside Waynad District with a specific direction fixing a time for early final disposal.

f) issue an appropriate order or direction that any report prepared by authorised officer Special Deputy Tahsildar (L.R.) Arumugan and subsequently in the year 2000, 2001, 2002 if any will stand expunged and eschewed from being considered by any Taluk Land Board hearing and deciding the case TLB.1104/73(Mtdy).

g) issue appropriate writ or order or directions to the Respondents 3 and 4 to cause enquiry to be made into the allegations of organised corruption indulged in by the staff of 2nd Respondent and the Taluk Land Board in Wynad District and past and present Chairman and members and take appropriate action and report to this High Court.

h) grant such other reliefs as the circumstances may require and this Court may deem necessary to grant."

3. The first petitioner is the declarant in TLB.162/73 on the

file of the Taluk Land Board, North Wynad, which is renumbered as TLB.14/1986, Taluk Land Board, Thaliparamba. Ext.P2 order dated 15.10.1988 was passed in TLB.14/1986. The contention of the first petitioner is that in respect of 7.98 acres included in that ceiling case, the Taluk Land Board held that it is a coffee plantation as on 1.4.1964 and, therefore, the said extent was exempted from the ceiling provisions. The order in TLB 14/86 has become final. The second petitioner is the son of the first petitioner. The third petitioner is the power of attorney holder of Sri.O.Jayaraman, who is the brother of the first petitioner. TLB.1104/1973, on the file of the Taluk Land Board, North Waynad (now Taluk Land Board, Mananthavady) is pending, wherein Sri.Jayaraman is the declarant. On the basis of a statement filed by him, the ceiling proceedings were initiated. The petitioners contend that in Part VI of the ceiling return filed by Jayaraman it is specifically stated that in respect of 7.98 acres exempted in TLB.14/1986, the first petitioner is the lessee under a registered lease deed of the year 1962. It is contended that since it is a registered lease of the year 1962, the first petitioner is entitled to fixity of tenure under the Kerala Land

Reforms Act and that accepting that contention and holding that it is a coffee plantation, the Taluk Land Board has exempted that area in TLB.14/1986. It is stated that while issuing draft statement in TLB.1104/1973, the Taluk Land Board, instead of accepting the statement of the declarant in Part VI of the statement, has shown the extent of 7.98 acres as belonging to the declarant and as in his possession. The first petitioner contends that this draft statement is against his interest and would go contra to the concluded findings in TLB.14/1986. The Writ Petition has been filed in these circumstances. There is also a prayer to transfer TLB.1104/1973 to some other Taluk Land Board.

4. Learned single Judge dismissed the Writ Petition by the judgment impugned in this appeal. So far as the prayer for transfer is concerned, the learned single Judge held that the power to transfer is vested in the Land Board under Section 101 of the Kerala Land Reforms Act and a Writ Petition for that purpose is not maintainable. We are in agreement with the view taken by the learned single Judge that for the purpose of transferring a case from one Taluk Land Board to the other, the petitioners are not

entitled to approach this Court under Article 226 of the Constitution of India.

5. So far as the other prayers are concerned, the grievance of the petitioners would be redressed by directing the Land Board to issue a notice under Rule 12(2) of the Kerala Land Reforms Ceiling Rules, 1970 to petitioners 1 and 2. If such a notice is issued to petitioners 1 and 2, certainly they shall be deemed to be parties to the proceedings and they would be entitled to raise all the contentions which are available to them. To that extent, the prayer of the petitioners can be granted and a direction can be issued to the Taluk Land Board, North Waynad (now Taluk Land Board, Mananthavady) to issue notice under Rule 12(2) of the Ceiling Rules to petitioners 1 and 2 herein, before proceeding with TLB.1104/73 further.

6. The grievance of the petitioners is that the learned single Judge has made certain observations in the judgment impugned which would affect their contentions in the proceedings. All the findings and observations made while disposing of the Writ Petition except to the extent indicated in paragraph 4 above, are hereby

vacated. Petitioners would be entitled to raise all the contentions available to them before the Taluk Land Board after receipt of notice.

The Writ Appeal is disposed of accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/